UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 0:25-62543-CIV-DAMIAN

NILDO C. DE ALMEIDA,

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General, *et al.*,

Respondent.
_____/

RESPONDENTS' RETURN IN OPPOSITION
TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] by and through the undersigned Assistant United States Attorney and pursuant to the Court's Order to Show Cause, [D.E. 3], submit the following return in opposition to the Petition for Writ of Habeas Corpus [D.E. 1] ("Petition"). For the reasons set forth below, the Petition should be denied.[2]

INTRODUCTION

Petitioner Nildo C. De Almeida, ("Petitioner") in relevant part, asks this Court to "[i]ssue a Writ of Habeas Corpus order the Respondents to release the Petitioner for custody." *See* D.E. 1, Petition at p. 16. Petitioner claims that his custody determination is governed by 8 U.S.C. § 1226.

[1] Respondents request that the Court dismiss this Petition against all Respondents except Assistant Field Office Director (AFOD) Juan Gonzalez, who is the Petitioner's immediate custodian. *See Rumsfeld v. Padilla*, 542 U.S. 426, 449, 124 S. Ct. 2711, 2726, 159 L. Ed. 2d 513 (2004) (holding that a petition for writ of habeas corpus challenging physical custody must name the immediate custodian of the petitioner as the respondent).

[2] Respondents recognize that courts in this District have rejected similar arguments in granting habeas petitions. *See, e.g., Perez v. Parra*, Case No. 25cv24820 (S.D. Fla.). Nonetheless, Respondents maintain and preserve these arguments for the record in this case.

Id. at ¶ 25. However, as set forth below, his ongoing mandatory detention is in accordance with 8 U.S.C. § 1225(b), which mandates mandatory detention pending removal for individuals seeking admission to the United States.

Accordingly, this case comes down to a question of statutory interpretation. Specifically, what statutory provision controls Petitioner's detention. Section 1225(b)(2)(A) mandates detention for "an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(A). Pursuant to § 1225(a), "[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Petitioner has resided in the United States without admission or parole since 2002 but has applied for immigration status through a pending I-130, Petition for Alien Relative and a pending I-918, Petition for U Non-Immigrant Status. *See* D.E. 1, Petition, at ¶ 31. Accordingly, under a plain language reading of § 1225, Petitioner is an applicant for admission who is seeking admission and is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the reasons explained more fully below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Brazil who entered the United States at an unknown date and unknown time. *See* Ex. A, Form I-213, Record of Inadmissible/Deportable Alien, dated Sept. 26, 2025 ("9/26/25, Form I-213"). On or about August 10, 2016, Petitioner was interviewed by Homeland Security Investigations (HSI) and found to be inadmissible. *See* Ex. A, 9/26/25, Form I-213. Although Petitioner was served with a Notice to Appear ("NTA"), it was not filed with the Executive Office for Immigration Review ("EOIR"). *See id.*; *see also* Ex. B, Declaration of Deportation Officer Jiesys Miranda ("Declaration").

On or about July 27, 2020, Petitioner was encountered by Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), during a targeted operation, where he was detained by ICE ERO. *See* Ex. C, Form I-213, dated July 27, 2020 (7/27/2020, Form I-213). On or about August 3, 2020, Petitioner was served with a NTA charging him with removability pursuant to INA section 212(a)(6)(A)(i), and it was filed with the EOIR on the same date. *See* Ex. D, NTA. On August 20, 2020, Petitioner admitted the factual allegations in the NTA and conceded the charge of removability. *See* Ex. B, Declaration. The Immigration Judge designated Brazil as the country of removal. *See* Ex. B, Declaration.

On September 10, 2020, Petitioner was scheduled for a custody redetermination hearing and a second master calendar hearing before the immigration court. *See* Ex. B, Declaration. The Immigration Judge denied Petitioner's request for custody redetermination, finding Petitioner a danger to the community and a poor bail risk; Petitioner reserved appeal. *See* Ex. B, Declaration; *see also* Ex. E, BIA Decision on Appeal and Immigration Judge's Bond Memorandum. On that same date, Petitioner filed for relief pursuant to section 240A(b) of the INA, cancellation of removal for non-residents. *See* Ex. B, Declaration.

On October 13, 2020, Petitioner filed an appeal of the custody redetermination with the Board of Immigration Appeals ("BIA"). Ex. B On or about December 10, 2020, ICE ERO released Petitioner from custody on a release on his own recognizance (OREC) and placed Petitioner on the Alternative to Detention program. *See* Ex. A, 9/26/25, Form I-213. On April 9, 2021, the BIA dismissed Petitioner's appeal of the custody determination as moot, due to Petitioner being released from custody. Ex. E.

Meanwhile, on October 14, 2020, Petitioner had a hearing on his application for relief from removal, before the EOIR. *See* Ex. B, Declaration. On December 15, 2020, ICE filed a motion

requesting the immigration judge issue a decision. *See* Ex. F, DHS Request for Decision. On January 13, 2021, the immigration judge issued a decision denying Petitioner's request for relief and reserving appeal for both parties. *See* Ex. G, Written Decision and Orders of the Immigration Judge, dated Jan. 11, 2021.

On February 10, 2021, Petitioner filed an appeal with BIA of the Immigration Judge's decision on his application for relief; that appeal is currently pending. *See* Ex. H. On December 18, 2025, ICE filed a Notice to the Board of Immigration Appeals and Request for Alien Appeal be Expedited with the BIA. *See* Ex. B, Declaration. The appeal remains pending. *See* Ex. B, Declaration.

On September 26, 2025, state law enforcement encountered Petitioner during the execution of a search warrant and arrested him for civil 287 (g) violations. *See* Ex. A, 9/26/25, Form I-213. On that same day, ERO issued a Form I-200, revoked Petitioner's OREC pursuant to 236(b), and detained Petitioner. *See* Ex. I, Form I-200, Warrant for Arrest of Alien. Petitioner is currently detained at the Broward Transitional Center ("BTC"), pursuant to section 235(b)(2)(A), as an applicant for admission who is seeking admission.

ARGUMENT

I. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of § 1225(b)(2), the Government is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

A. The Plain Language of § 1225(b)(2) Mandates Detention of Applicants for Admission.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a) deems all aliens who either "arrive[] in the United States" or who are "present in the United States [and] who ha[ve] not been admitted" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the Immigration and Nationality Act ("INA") means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

In turn, § 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The statute's use of the term "shall" makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception based upon the duration of the alien's presence in the country or where in the country the alien is located. Therefore, the statute's plain text mandates that the Government detain all "applicants for admission" who are not clearly and beyond a doubt entitled to be admitted.

Petitioner falls squarely within the statutory definition. He was "present in the United States," and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a); *see* Petition at ¶¶ 18–19. Moreover, Petitioner cannot establish—and has not even alleged that he can establish—that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C.

§ 1225(b)(2)(A). Therefore, § 1225(b)(2) mandates Petitioner "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

B. Applicants for Admission under § 1225(b)(2) are seeking to be legally admitted into the United States.

As explained above, Petitioner is an "applicant[] for admission" under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. The statute itself makes clear that an alien who is an "applicant for admission" *is* necessarily "seeking admission." Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to withdraw their application for admission and depart from the United States voluntarily, is "seeking admission," i.e., seeking legal authority to remain in the United States.

1. The "seeking admission" clause does not negate or otherwise limit the statutorily defined term "applicant for admission".

Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission"—no additional affirmative step is necessary. In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to pursue voluntary withdrawal of their application for admission.

For example, § 1225(a) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or readmission … shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first

action is a subset of the second action"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A).[3] No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). Accordingly, § 1225(b) unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

2. Any perceived redundancy in the statute cannot serve as a basis to avoid the clear language of the statute.

As explained above, an "applicant for admission" is "seeking admission" under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that "is not a license to rewrite" § 1225 "contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance" especially when "the arguably redundant words that the drafters employed … are functional synonyms" (alterations accepted and emphasis in original)).

"The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). "Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack

[3] As § 1225 shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1103(A)(13)(C).

of foresight, or sometimes simply because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. "[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* Thus, as the Supreme Court explained in *Barton*, "[s]ometimes the better overall reading of a statute contains some redundancy." *Id.*

Moreover, "the surplusage canon … must be applied with statutory context in mind" and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

3. Applicants for admission are seeking admission when they seek to lawfully remain in the United States.

Even if "seeking admission" requires some separate affirmative conduct by the alien, an applicant for admission who attempts to avoid removal from the United States, rather than trying to withdraw their application for admission, is "seeking admission."

Section 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, regardless of how long the alien has been in the United States. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, § 1225(b)(2) is not concerned with the alien's pre-inspection conduct. Rather, the statute's use of present tense language ("seeking" and "determines") shows that its focus is a specific point in time—when "the examining immigration officer" is making a "determin[ation]" regarding the alien's admissibility. 8 U.S.C. § 1225(b)(2)(A). At that point, the alien is "seeking" admission into the United States,

and continues to be an alien seeking admission as the application is an ongoing one. *See* The American Heritage Dictionary of the English Language (defining "seek" and "seeking" as "to endeavor to obtain"). If it were otherwise, the applicant would not attempt to show that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by § 1225(a)(4), which authorizes an alien to voluntarily withdraw their application for admission and "depart immediately from the United States." 8 U.S.C. § 1225(a)(4). Therefore, an applicant who forgoes that statutory option and instead endeavors to prove admissibility through § 240 removal proceedings—proceedings in which the alien has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted," *id.* § 1229a(c)(2)(A)—is seeking admission to the United States in the same way someone who is encountered just after crossing the border is attempting to obtain admission to the United States.

C. Section 1226 Does Not Support Petitioner's Argument.

Petitioner's reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner's detention is controlled by § 1225(b)(2), not § 1226.

Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While, as explained below, there is some overlap between the aliens subject to detention under the two detention provisions, that overlap does not create a redundance because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed "applicants for admission" subject to § 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable, like those who overstay

a visa or lawful permanent residents who engage in conduct that renders them removable.[4] Thus, section 1225(b)(2) is the more specific detention provision. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). Accordingly, § 1226(a) does not control Petitioner's detention.

Section 1226(c) provides for mandatory detention and is an exception to § 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Petitioner has not committed one of the specified offenses and has not engaged in terrorism-related actions. Accordingly, he is not detained under § 1226(c).

Congress's desire to further limit the parole power with respect to criminal aliens was one of the principal reasons that it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive's "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269 (Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the Secretary's exceptionally narrow parole authority. It does not suggest congressional uncertainty about § 1225(b)(2)(A)'s detention mandate, but rather congressional desire to shut down a parole loophole that allowed the Government to circumvent that mandate.

[4] The detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

D. The Government's Reading Comports with Congressional Intent.

Before 1996, federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. In 1996, Congress passed the IIRIRA specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Accordingly, the Government's reading of the statute is not only supported by the express language of § 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to a result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 222-23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099. Accordingly, the INA's prior framework, which distinguished between aliens based on physical "entry," had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including*

> *the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

Hurtado, 29 I&N Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

Congress discarded that regime through enactment of IIRIRA. Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants

that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would … create the very [thing] that Congress designed the Act to avoid").

The Government's reading, on the other hand, is true to Congress's intent and should be adopted.

E. The Government's Reading Accords with *Jennings*.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of § 1225(b) that § "1225(b)(2) …. serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

F. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practice

Any argument that prior agency practice applying § 1226(a) to Petitioner is unavailing because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the plain language of the statute and not prior practice controls. *Hurtado*, 29 I&N Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." *Loper Bright*, 603 U.S. at 411. *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by

twenty years. *Id.* at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*.

II. Petitioner's release was properly revoked pursuant to 8 U.S.C. 1226(b) and he is properly detained pursuant to 8 U.S.C. § 1225, even though he was previously detained pursuant to § 1226.

As discussed above, Petitioner entered the country without inspection and has not been admitted into the United States as understood by the Immigration and Nationality Act ("INA"). He has previously been detained, and released, by the Department of Homeland Security pursuant to INA 236(a) (8 U.S.C. § 1226). However, since Petitioner was last released pursuant to 8 U.S.C. INA 236(a), the development of law that culminated in the decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), lead to the determination that his current detention is subject to INA 235(b)(2) (8 U.S.C. § 1225(b)(2)), not § 1226. This decision, as discussed above is based on his status as an applicant for admission who is currently seeking admission to the United States. Furthermore, because Petitioner was initially released on his own recognizance pursuant to INA 236(a)(2)(B) in 2020, the INA provides that ICE ERO may revoke a bond or parole authorized under 236(a), rearrest the alien under the original warrant, and detain the alien. *See* INA 236(b).

First, "8 U.S.C. § 1226(b) unequivocally provides, 'The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.'" *Abreu v. Rivera*, No. 25-20821-CIV, 2025 WL 2163051, at *8 (S.D. Fla. May 12, 2025), report and recommendation adopted, No. 25-20821-CIV, 2025 WL 2160163 (S.D. Fla. July 30, 2025) (citing 8 U.S.C. § 1226(b)). The INA does not require an intervening change in circumstances when revoking release, such as OREC. *See* INA 236(b). But, even if a change in circumstances was required, it existed here: EOIR denied relief and ordered removal from the United States. *Cf. Matter of Sugay*, 17 I. & N. Dec. 637 (B.I.A. 1981). The reasoning of *Matter of Sugay*, 17 I. & N. Dec. 637 (B.I.A. 1981) shows that ICE does not need to

return to Immigration Court to revoke his bond. In *Sugay*, information elicited at a deportation hearing which took place subsequent to an immigration judge's reduction of bond hearing revealed concerning information justifying revocation of bond. The Board of Immigration Appeals in *Sugay* found meritless the argument that the district director was without authority to revoke bond after a bond redetermination hearing. *Id.* at 639. The court concluded that the alien still had recourse to "other administrative authority for release from custody" under then controlling provision. *Id.* The court found persuasive that the "newly developed evidence brought out at the deportation hearing" (which included fleeing a murder conviction in his origin country, criminal activity in the United States, and weak ties) represented a "considerable change in circumstances" justifying the director's decision. *Id.* To the extent Petitioner seeks release from custody, he must resort to the EOIR, which he has not done.

III. Petitioner Failed to Exhaust Administrative Remedies.

Furthermore, the Court should dismiss the Petition for lack of jurisdiction as Petitioner failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Petitioner has not availed himself of the administrative remedies available to him. On February 10, 2021, Petitioner filed an appeal with BIA of the Immigration Judge's decision on his application for relief; that appeal is currently pending. *See* Ex. H. On December 18, 2025, ICE

filed a Notice to the Board of Immigration Appeals and Request for Alien Appeal be Expedited with the BIA. *See* Ex. B, Declaration. As the appeal remains pending, Petitioner has not exhausted his administrative remedies.

IV. Petitioner does not have standing to bring his Administrative Procedures Act ("APA") claim.

Petitioner also does not have standing to bring his APA claim. *See* Petition, D.E. 1, at ¶¶ 44–49. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas–release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Dated: December 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List via CM/ECF.

/s/ David Werner
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